

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-05-264

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FORTIS INSURANCE COMPANY,

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Fortis Insurance Company (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated February 18, 2005 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as an accident and health insurance company.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on February 18, 2005, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2003 to December 31, 2003.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, any and all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue A1 concerns the following violation: Failure, in some cases, to maintain records required for market conduct purposes. The Respondent shall provide evidence that it has established procedures to ensure that all records required for market conduct examination purposes are maintained in compliance with Colorado insurance law.
10. Issue A2 concerns the following violation: Failure to submit an Annual Report and Certification of Forms in use or available for use in 2003. The Respondent shall provide evidence that it has established procedures to ensure that an Annual Report and Certification of Forms are filed in compliance with Colorado insurance law.
11. Issue A3 concerns the following violation: Failure to comply with all applicable requirements of the Consumer Protection Standards Act for the Operation of Managed Care Plans, including maintaining an access plan for each managed care network offered in Colorado. The Respondent is subject to the requirements of the Consumer Protection Standards Act for the Operation of Managed Care Plans, § 10-16-701 *et seq.*, C.R.S. and all Colorado insurance laws and regulations. Failure to implement the directives herein will result in a penalty of ten thousand dollars (\$10,000.00) for every act or violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars (\$150,000.00) in any six-month period. Respondent shall provide evidence that it has established procedures to ensure that it is in compliance with all requirements of the Consumer

Protection Standards Act for the Operation of Managed Care Plans, including maintaining an access plan for each managed care network offered in Colorado as required by Colorado insurance law.

12. Issue E1 concerns the following violation: Failure to reflect that required repairs and replacements of prosthetic devices are to be covered. The Respondent shall provide evidence that it has revised its individual policy forms to reflect required coverage for repair and replacement of prosthetic devices to ensure compliance with Colorado insurance law.
13. Issue E2 concerns the following violation: Failure to disclose the existence and availability of an access plan. The Respondent shall provide evidence that it has revised all affected forms to reflect the existence and availability of an access plan for each managed care network offered in Colorado to ensure compliance with Colorado insurance law.
14. Issue E3 concerns the following violation: Failure to disclose the mandated hospitalization and general anesthesia benefit for dental procedures for dependent children. The Respondent shall provide evidence that it has revised all applicable forms to ensure that the mandatory hospitalization and general anesthesia coverage for dependent children's dental procedures are disclosed in compliance with Colorado insurance law.
15. Issue E4 concerns the following violation: Failure to provide benefits for covered services based on a licensed provider's status, e.g., a family member of a legal guardian. The Respondent shall provide evidence that it has revised all applicable forms to reflect that benefits are not denied solely based on a providers status, e.g., a family member or legal guardian, to ensure compliance with Colorado insurance law.
16. Issue E5 concerns the following violation: Failure to allow for services appropriately provided through telemedicine. The Respondent shall provide evidence that it has revised all applicable forms to reflect the use of telemedicine as a covered benefit without the requirement of personal contact between a provider and covered person to ensure compliance with Colorado insurance law.
17. Issue E6 concerns the following violation: Failure to reflect a correct description of coverage to be provided for prostate cancer screenings. The Respondent shall provide evidence that it has revised all applicable forms to reflect a correct description of coverage to be provided for prostate cancer screenings to ensure compliance with Colorado insurance law.
18. Issue E7 concerns the following violation: Failure to reflect correct benefits to be provided for mammography screening. The Respondent shall provide evidence that it has revised all applicable forms to reflect a correct

description of the benefits to be provided for mammography screening to ensure compliance with Colorado insurance law.

19. Issue E8 concerns the following violation: Failure to include notification of the availability of and a description of the independent external review procedures in or attached to the policy. The Respondent shall provide evidence that it has revised all applicable forms to include a description of the independent external review procedures to ensure compliance with Colorado insurance law.
20. Issue E9 concerns the following violation: Failure to reflect only allowable exclusions for payment of life insurance benefits. The Respondent shall provide evidence that it has revised all applicable forms to reflect only allowable exclusions for payment of life insurance benefits to ensure compliance with Colorado insurance law.
21. Issue E10 concerns the following violation: Failure to allow benefits for accidental death to be paid when death results from suicide, attempted suicide or intentionally self-inflicted injury while insane. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct accidental death benefits to ensure compliance with Colorado insurance law.
22. Issue E11 concerns the following violation: Failure to reflect an accurate description of the mandated therapies for congenital defects and birth abnormalities for children. The Respondent shall provide evidence that it has revised all applicable forms to reflect an accurate description of the mandated therapies for congenital defects and birth abnormalities for children to ensure compliance with Colorado insurance law.
23. Issue E12 concerns the following violation: Failure to reflect all required information in applications concerning replacement of coverage. The Respondent shall provide evidence that it has revised its applications to reflect all the required information concerning replacement of coverage to ensure compliance with Colorado insurance law.
24. Issue E13 concerns the following violation: Failure to reflect a correct definition of a dependent. The Respondent shall provide evidence that it has revised all applicable forms to reflect the correct definition of a dependent to ensure compliance with Colorado insurance law.
25. Issue E14 concerns the following violation: Failure to reflect correct coverage for child health supervision services. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct benefits for child health supervision services to ensure compliance with Colorado insurance law.

26. Issue E15 concerns the following violation: Failure to reflect correct disclosure information and determination questions on forms used for Business Groups of One purchasing individual coverage. The Respondent shall provide evidence that it has revised all applicable forms used for Business Groups of One applying for individual coverage to reflect all correct disclosure information to ensure compliance with Colorado insurance law.
27. Issue E16 concerns the following violation: Failure to reflect correct coverage to be provided for home health services and hospice care. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct coverage for home health services and hospice care to ensure compliance with Colorado insurance law.
28. Issue E17 concerns the following violation: Failure to reflect the coverage to be provided for inherited enzymatic disorders. The Respondent shall provide evidence that it has revised all applicable forms to reflect the coverage to be provided for inherited enzymatic disorders to ensure compliance with Colorado insurance law.
29. Issue E18 concerns the following violation: Failure to reflect a correct definition of what qualifies as creditable coverage for purposes of reducing pre-existing condition limitations. The Respondent shall provide evidence that it has revised all applicable forms to reflect a correct and complete definition of what qualifies as creditable coverage for purposes of reducing pre-existing condition limitations to ensure compliance with Colorado insurance law.
30. Issue E19 concerns the following violation: Failure to reflect correct provisions required in individual policies. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct provisions for individual policies to ensure compliance with Colorado insurance law.
31. Issue E20 concerns the following violation: Failure to reflect correct or complete elements in the CoverColorado Notice form. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct and complete elements in the CoverColorado Notice form to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
32. Issue E21 concerns the following violation: Failure to reflect that forty-eight (48) or ninety-six (96) hours hospital stay coverage is to be provided for newborns. The Respondent shall provide evidence that it has revised all applicable forms to reflect forty-eight (48) or ninety-six (96) hours hospital

stay coverage, depending on the type of delivery, is provided for newborns to ensure compliance with Colorado insurance law.

33. Issue E22 concerns the following violation: Failure to reflect correct information concerning allowable reasons for termination of coverage. The Respondent shall provide evidence that it has revised all applicable forms to reflect correct information concerning discontinuance of coverage to ensure compliance with Colorado insurance law.
34. Issue E23 concerns the following violation: Failure to maintain and provide the Standard Health Benefit Plan description form to Business Groups of One applying for an individual plan. The Respondent shall provide evidence that it has established procedures to maintain and provide a Standard Health Benefit Plan description form to Business Groups of One applying for an individual plan to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
35. Issue E24 concerns the following violation: Failure to include all required information in Certificates of Creditable Coverage. The Respondent shall provide evidence that it has revised its Certificates of Creditable Coverage to reflect information concerning a significant break in coverage to ensure compliance with Colorado insurance law.
36. Issue G1 concerns the following violation: Failure to automatically provide Colorado Health Plan Description forms during the application process. The Respondent shall provide evidence that it has established procedures to ensure that Health Plan Description forms are automatically provided during the application process in compliance with Colorado insurance law.
37. Issue G2 concerns the following violation: Failure to issue CoverColorado notices in some required instances. The Respondent shall provide evidence that it has established procedures to ensure that CoverColorado notices are issued in all required instances in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
38. Issue H1 concerns the following violation: Failure, in some cases, to issue Certificates of Creditable Coverage. The Respondent shall provide evidence that it has established procedures to ensure that Certificates of Creditable Coverage are issued to all insureds terminating medical coverage in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

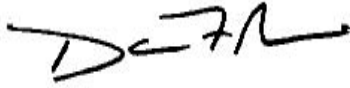
39. Issue H2 concerns the following violation: Failure to provide written notice of eligibility for coverage under CoverColorado in some required cases. The Respondent shall provide evidence that it has established procedures to ensure that written notice of eligibility for coverage under the CoverColorado program is issued in compliance with Colorado insurance law.
40. Issue H3 concerns the following violation: Failure to affirm or deny coverage within a reasonable time resulting in unreasonable delays in rescinding coverage. The Respondent shall provide evidence that it has established procedures to ensure the elimination of any unfair claim settlement practices in rescinding coverage in compliance with Colorado insurance law.
41. Issue J1 concerns the following violation: Failure, in some cases, to pay, deny or settle claims within the time periods required by Colorado insurance law. The Respondent shall provide evidence that it has established procedures indicating that all claims are paid, denied or settled within the required time periods to ensure compliance with Colorado insurance law.
42. Issue J2 concerns the following violation: Failure, in some cases, to accurately process claims. The Respondent shall provide evidence that it has established procedures to ensure that claim processing is reviewed for accuracy of payment in compliance with Colorado insurance law. Additionally, Respondent shall perform a self-audit of all claims involving the denial of the professional component of lab services performed in network facilities beginning January 1, 2003 to June 16, 2005. Respondent shall submit a summary of the findings to the Division on or before September 30, 2005.
43. Issue J3 concerns the following violation: Failure to accurately determine the number of days utilized for claim processing. The Respondent shall provide evidence that it has established procedures to ensure that the number of days used to process claims are accurately determined in compliance with Colorado insurance law.
44. Issue J4 concerns the following violation: Failure, in some instances, to pay late payment interest/penalties on claims. The Respondent shall provide evidence that it has established procedures to ensure that all applicable late payment interest and penalties on claims are paid in compliance with Colorado insurance law. Additionally, Respondent shall perform a self-audit and pay all applicable late interest and penalty payments on claims beginning January 1, 2003 to June 16, 2005. Respondent shall submit a summary of the findings to the Division on or before September 30, 2005.

45. Issue K1 concerns the following violation: Failure to reflect complete utilization review guidelines in an operational policy and procedures document. The Respondent shall provide evidence that it has established procedures to ensure that complete information for utilization review guidelines is reflected in its policy and procedures document in compliance with Colorado insurance law.
46. Issue K2 concerns the following violation: Failure to provide correct or complete information related to an insured's right to appeal adverse determinations. The Respondent shall provide evidence that it has established procedures to ensure that correct and complete descriptions of appeal procedures available to an insured are included with notice of adverse determinations in compliance with Colorado insurance law.
47. Issue K3 concerns the following violation: Failure to include all required elements in written notification letters for First Level Appeal Reviews. The Respondent shall provide evidence that it has established procedures to ensure that notification letters used for First Level Appeal Reviews include all required elements in compliance with Colorado insurance law.
48. Issue K4 concerns the following violation: Failure to enter written First Level or any Second Level Appeal Reviews into the complaint record. The Respondent shall provide evidence that it has established procedures to ensure that all written First Level and Second Level Appeal Reviews are entered into its complaint records in compliance with Colorado insurance law.
49. Issue K5 concerns the following violation: Failure to use correct procedures in conducting Utilization Review. The Respondent shall provide evidence that it has established procedures to ensure that all utilization review cases are processed in compliance with Colorado insurance law.
50. Issue K6 concerns the following violation: Failure to provide telephone notification of determinations in all cases. The Respondent shall provide evidence that it has corrected its procedures to ensure that all notifications of determinations are provided in compliance with Colorado insurance law.
51. Issue K7 concerns the following violation: Failure, in some cases, to use the correct method of notification for concurrent and retrospective review determinations. The Respondent shall provide evidence that it has established procedures to ensure that the correct method of notification is used for all concurrent and retrospective review determinations in compliance with Colorado insurance law.
52. Issue K8 concerns the following violation: Failure to have notification of denials of claims for 'not medically necessary' signed by a licensed

physician. The Respondent shall provide evidence that it has established procedures to ensure that all written details of coverage with the wording 'not medically necessary', are signed by a licensed physician in compliance with Colorado insurance law.

53. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of thirty eight thousand and no/100 dollars (\$38,000.00). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
54. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.
55. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self-audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
56. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
57. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination Report dated February 18, 2005, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 16th day of June, 2005.

A handwritten signature in black ink, appearing to read 'D-F-R', is positioned above a horizontal line.

David F. Rivera
Commissioner of Insurance

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 16th day of June, 2005, I deposited the within **FINAL AGENCY ORDER NO. O-05-264 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FORTIS INSURANCE COMPANY**, in the United States mail via certified mail with the proper postage affixed and addressed to:

Mr. Donald G. Hamm, President
Fortis Insurance Company
501 West Michigan Street
Milwaukee, WI 53201

Ms. Julie Hix, Vice President of Product Compliance
Fortis Insurance Company
501 West Michigan Street
Milwaukee, WI 53201

A handwritten signature in black ink, reading "Dolores Arrington". The signature is fluid and cursive, with the first name "Dolores" and last name "Arrington" clearly distinguishable.

Dolores Arrington, MA, AIRC, ACS
Market Conduct Section
Division of Insurance